

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

NECA-IBEW LOCAL 364 DEFINED )  
CONTRIBUTION PENSION TRUST FUND, *et al.*,) )  
Plaintiffs, ) CIVIL ACTION  
vs. ) ) NO. 24-cv-50312  
PORTER BROTHERS CONSTRUCTION, INC., ) JUDGE IAIN D. JOHNSTON  
an Illinois corporation, f/k/a PORTER BROTHERS ) MAGISTRATE MARGARET J.  
ASPHALT & SEALING, INC., ) SCHNEIDER  
Defendant. )

**MOTION FOR ENTRY OF JUDGMENT**

Plaintiffs, by and through their attorneys, default having been entered against the Defendant on September 23, 2024, request this Court enter judgment against Defendant, PORTER BROTHERS CONSTRUCTION, INC., an Illinois corporation, f/k/a PORTER BROTHERS ASPHALT & SEALING, INC., pursuant to F.R.Civ.P. Rule 55(b). In support of this Motion, Plaintiffs state:

1. On September 23, 2024, this Court entered default against Defendant (Docket # 12). On November 8, 2023, this Court granted Plaintiffs' request for an order directing Defendant to turn over its monthly fringe benefit contribution reports for the time period September 2023 forward (Docket # 14).
2. Defendant's breach of its obligations in this case are established by the allegations of the complaint and the affidavit of James Schreiber which is attached hereto as Exhibit 1.
3. The Court has federal question subject matter jurisdiction over Plaintiff's complaint, as it alleges a claim under ERISA, 29 U.S.C. §§1132, 1145 (Docket # 1, ¶ 1).

4. The general rule is that the factual allegations of a complaint are “deemed admitted by the defendant upon default.” *Davis v. Hutchins*, 321 F.3d 641, 648-49 (7th Cir. 2003); F.R.C.P. 8(d).

5. Under ERISA:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

29 U.S.C. §1145.

6. ERISA further authorizes the fiduciaries of a covered Fund to bring a civil action against employers to enforce the terms of its governing Plan or to enforce ERISA. 29 U.S.C. §1132(a)(3); *Board of Trustees of the Hotel & Restaurant Emples. Local 25 v. JPR, Inc.*, 136 F.3d 794 (D.C. Cir. 1998).

7. Defendant submitted monthly contribution reports to the Plaintiffs identifying employees of the Defendant who performed work covered by the collective bargaining agreement, and the number of hours worked by or paid to those employees for the months of September 2023 through December 2023. Said monthly contribution reports establish that Defendant owes the Plaintiffs the amount of \$113,125.28 for contributions (See, Ex.1, Schreiber Aff., ¶ 6).

8. Pursuant to the Trust Agreements, a liquidated damages surcharge has been assessed against the Defendant on all contributions due and unpaid and all contributions which were paid late, for the months of September 2023 through December 2023, in the total amount of \$21,207.34 (Ex. 1, Schreiber Aff. ¶ 5, 7-8).

9. Plaintiffs' firm has expended \$549.00 for costs and \$1,332.50 for attorneys' fees in this matter. (See, Ex. 2, Affidavit of Catherine M. Chapman, ¶ 10).

10. Based upon the documents attached hereto, Plaintiffs request entry of judgment by default in the total amount of \$136,214.12. A draft proposed judgment order will be submitted via the Court's proposed email box.

WHEREFORE, Plaintiffs respectfully request this Court to enter judgment in the amount of \$136,214.12.

/s/ Patrick N. Ryan

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney of record, hereby certifies that he electronically filed the foregoing document (Motion for Entry of Judgment) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participants on or before the hour of 5:00 p.m. this 3rd day of January 2025:

Mr. Trent L. Bush, Registered Agent  
Porter Brothers Construction, Inc.,  
f/k/a Porter Brothers Asphalt & Sealing, Inc.  
202 East Fifth Street  
Sterling, IL 61081-3651

Mr. Matthew Porter, President  
Porter Brothers Construction, Inc.  
9904 Freeport Road  
Rock Falls, IL 61071-9502

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/s/    Patrick N. Ryan

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